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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL VANEGAS,

Defendant and Appellant.

B208637

(Los Angeles County  
Super. Ct. No. BA309786)

THE COURT:\*

Daniel Vanegas (appellant) appeals from the judgment entered following a jury trial resulting in his conviction of two counts of assault with a firearm (Pen. Code, § 245, subd. (a)(2); counts 2 & 9),<sup>1</sup> each with findings of the personal use of a firearm (§ 12022.5, subd. (a)) and a gang enhancement (§ 186.22, subd. (b)(1)). The trial court exercised its discretion pursuant to section 1385 and struck the gang enhancements. Appellant was sentenced to concurrent terms of three years for the assaults, each enhanced by four years for the use of a firearm for an aggregate term of seven years in state prison.

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BOREN, P. J., ASHMANN-GERST, J., CHAVEZ, J.

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

After examination of the record, counsel filed an “Opening Brief” in which no issues were raised. On December 22, 2008, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. No response has been received to date.

The trial evidence disclosed the following: as it was getting dark on September 22, 2006, 16-year-old Jonathan L., a Mara Salvatrucha gang member (M.S.), and his unaffiliated friend, Ronald C., were talking outside Jonathan L.’s Rosewood Avenue apartment. Suddenly, two youths walked upstairs and pointed nine-millimeter handguns at their heads. Jonathan L. recognized the youths as Black Diamond gang members “Dopey”<sup>2</sup> and appellant. Jonathan L. had M.S. gang tattoos on one hand and was wearing a belt buckle which said “M.S.”

As the appellant and his companion pointed guns at Jonathan L. and Ronald C.’s heads, Mateuz “dissed” the M.S. gang, saying: “F--- monkey shit. You don’t know monkey shits. F— Monkey Shits. What’s up now?” “Monkey shits” is a derogatory term for M.S. gang members. They told Jonathan L. that this was a Black Diamond neighborhood. Jonathan L. was “in shock” and said nothing.

They told Ronald C. to “get out of here,” and he left. Appellant stepped over and punched Jonathan L. in the face. Jonathan L. fell, and Mateuz kicked him in the chest. Mateuz ordered Jonathan L. to descend the stairs to the alley, but Jonathan L. refused. After an apartment resident drove up in her car, appellant and Mateuz ran away.

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<sup>2</sup> Alexander “Dopey” Mateuz (Mateuz). Codefendant Mateuz was tried with appellant. Mateuz was convicted in count 1 of assault with a firearm on Ronald C. (§ 245, subd. (a)(2)), in counts 5, 6, and 8, with assault with a semiautomatic firearm respectively on Bianca A., Elio R., and Jonathan L. (§ 245, subd. (a)(2)), and in counts 3 and 7 of unlawful firearm activity (§ 12021, subd. (e)). In conjunction with these convictions, the jury made various findings of the use of a firearm (§ 12022.5, subd. (a)) and gang enhancements (§ 186.22, subd. (b)). The jury could not agree on a verdict as to count 4, a charge of shooting at an occupied vehicle, and count 4 was eventually dismissed. Mateuz has appealed from the judgment. (*People v. Alexander Matuez*, B210698.)

That evening, Jonathan L. told a neighbor who lived three doors down, Bianca A., about the assault.<sup>3</sup>

The following day, September 23, 2006, at about 10:00 or 11:00 a.m., Bianca A. was walking to the parking lot of her apartment building with her boyfriend, Elio R., a former M.S. gang member. Appellant, who lived in a nearby apartment complex and Mateuz approached her with Mateuz muttering “F— mierda,” and “Black Diamond.” At trial, Bianca A. explained that “mierda” was the Spanish word for “shit” and that saying “F— mierda” and saying “F— M.S.” was the same thing. While Mateuz was yelling gang slogans at her, appellant was “throwing” Black Diamond hand signs. Two other youths and a female were standing with Mateuz and appellant.

Bianca A. explained that the youths were attempting to “piss her off” because her estranged husband was an M.S. gang member, and 10 years earlier, at age 16, she was associating with M.S. Presently, she was a five year resident of the neighborhood and she had no difficulties with her neighbors. Appellant was the younger brother of a friend of hers, and appellant was aware of her personal history. Recently, appellant had joined the Black Diamond gang and apparently had informed Mateuz about Bianca A.’s former associations.

Initially, Bianca A. did not respond to Mateuz. Then, she told Mateuz, “F--- you.” Bianca A. and Elio R. got into Elio R.’s car and drove out of the parking lot. After turning right onto Rosewood Avenue, Elio R. stopped momentarily for traffic. Bianca A. looked at Mateuz through her open car window and “flipped him off.” Mateuz got a startled look on his face, turned and ran to his female companion. He grabbed a handgun from the woman and shot at Bianca A. and Elio R. as they turned the corner and drove off.

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<sup>3</sup> At the time of trial, Jonathan L. was incarcerated because he had been convicted of two felony offenses concerning gang graffiti and he had violated probation.

Immediately, Bianca A. reported the shooting to the police using a cellular telephone. Later that afternoon, she and Jonathan L. went to the police station and identified appellant and Mateuz as their assailants.

On the evening of September 26, 2006, Los Angeles police officers searched Mateuz's sports utility vehicle and found a black nine-millimeter handgun.

Officer Hugo Ayon, a gang detail officer, testified concerning the gang enhancement. He opined that appellant and Mateuz, were Black Diamond gang members, and that Jonathan L. claimed M.S. He said that the Black Diamond street gang, which had about 20 members, congregated in front of appellant's apartment complex at 4125 Rosewood Avenue. The officer also gave his opinion that M.S., a very large gang, was a rival of the Black Diamond gang. He opined that the instant assaults were committed for the benefit of the Black Diamond street gang.

We have examined the entire record and are satisfied that appellant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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